IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 29130 of 2007(S)

OA.413/2007 DATED 27/06/07 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS: APPLICANT:
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1. **KOYA.P., PRIMARY SCHOOL TEACHER, GOVERNMENT JUNIOR BASIC SCHOOL, MINICOY.**

2. **MUHAMMED KOYA K., PRIMARY SCHOOL TEACHER, SENIOR BASIC SCHOOL, AGATHI.**

BY ADV. SRI.S.KRISHNAMOORTHY

RESPONDENTS: RESPONDENTS:
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1. **ADMINISTRATOR, UNION TERRITORY OF LAKSHADWEEP,KAVARATTI.**

2. **DIRECTOR, DEPRATMENT OF EDUCATION, UNION TERITORY OF LAKSHADWEEP ADMINISTRATION, KAVARATTI.**

3. **SECRETARY,DEPARTMENT OF EDUCATION, ADMINISTRATION OF UNION TERRITORY OF LAKSHADWEEP, KAVARATHI.**

4. **B.K.SAJITHA,D/O.K.ALIKOYA,PRIMARY SCHOOL TEACHER, GOVERNMENT SENIOR BASIC SCHOOL AGATHI.**

5. **C.P.FATHAHUDDIN,PRIMARY SCHOOL TEACHER, GOVERNMENT SENIOR BASIC SCHOOL AGATHI.**

BY ADV. SRI.SHAFIK M.ABDUL KHADIR, SC, UT OF LAKSHADWEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.29130 of 2007-S

Judgment

Balakrishnan Nair, J.

The petitioners are Primary School Teachers under the Union Territory of Lakshadweep, having TTC/equivalent qualification. For appointment to the post of Primary School Teacher, the qualifications possessed by them were sufficient. For further promotion to the post of Headmaster of a Primary School, there was no prescription of any additional qualification. The Primary School Teachers, who were recruited with TTC/equivalent qualification were being promoted to that post according to their seniority. While so, the Lakshadweep Administration framed new Recruitment Rules for the post of Headmasters of Junior Basic Schools, Trained Graduate Teachers, Wardens and Primary School Teachers in 2002, which were enforced with effect from 17.09.2002. As per the said Rules, B.Ed. degree is also prescribed as one of the qualifications for recruitment to the post of Primary School Teacher. Further, it was also provided that the vacancies in the post of Headmaster shall be filled up in the ratio of 1:1 between the persons with TTC/equivalent

qualifications and B.Ed./equivalent qualifications. Hitherto, the Primary School Teachers were considered for promotion according to their seniority. After the above said Recruitment Rules, a new batch of Primary School Teachers have joined with B.Ed. qualifications. Now, they may steal a march over them and similarly placed seniors in the matter of promotion to the post of Headmaster. Therefore, challenging the above said Recruitment Rules, to the extent, it prescribes the ratio of 1:1 between the B.Ed. and TTC holders, for promotion to the post of Headmaster, the petitioners filed Ext.P1 OA before the CAT. The main prayers in the said OA were the following :

> *"(a) to quash clause No.12(2) of Schedule 1 of Annexure A3 to the extent it prescribes that 50% of the vacancies of Headmaster shall be filled by promotion from among the Primary School Teachers having B.Ed. Degree.*
>
> *(b) To direct the respondents 1 to 3 to promote the petitioners in the existing vacancy of Headmasters in Junior Basic School instead of their juniors like the 4th and 5th respondents."*

The Tribunal by Ext.P2 Judgment rejected their prayer to quash the relevant portion of the Recruitment Rules impugned by them. It was ordered that Ext.A5

representation filed by the petitioners before the Administrator of the Union Territory of Lakshadweep shall be disposed of by the said Officer after affording an opportunity of being heard to the applicants or their representative within four weeks from the date of receipt of the order of the CAT.

2. Feeling aggrieved by Ext.P2, the present Writ Petition is filed, seeking the following reliefs :

> *"i. to issue a writ of certiorari or other appropriate writ, order or direction quashing Ext.P2 order in OA No.413/07 dated 27.06.2007 of the Central Administrative Tribunal, Ernakulam Bench.*
>
> *ii. to issue a writ of certiorari or other appropriate writ, order or direction, to call for the records leading to Ext.P3 and to quash the same ;*
>
> *iii. to issue a writ of mandamus or other appropriate writ, order or direction, directing the 1st respondent to consider Annexure A5 and to amend the Recruitment Rules and till that time, the promotions to the post of Headmaster in 50% quota for B.Ed holders in Lower Primary Schools of the 1st respondent may be kept in*

abeyance.

iv. to issue a writ of certiorari or other appropriate writ, order or direction, quashing Annexure A3 to the extent, it prescribes 50% of the vacancies of the Headmaster shall be filled up by promotion from among the Primary School Teachers having B.Ed. Degree."

The main prayer is Prayer No.iv, which is to issue a writ of certiorari to quash Ext.P3 to the extent it prescribes that 50% of the vacancies in the post of Headmaster shall be filled up by promotion from among B.Ed. Degree holders. The prayer for certiorari to quash a statutory rule is quite inappropriate. (See the decision of the Apex Court in **Prabodh Verma v. State of UP** (AIR 1985 SC 167). The second limb of prayer No.(iii) is to issue a mandamus to the first respondent to amend the recruitment Rules. No mandamus can be issued to the delegate of the legislature to amend a subordinate legislation. See the decision of the Hon. Supreme Court in **Narinder Chand Hemraj v. Union Territory of Himachal Pradesh** (AIR 1971 SC 2399).

3. A statutory rule can be challenged under Article 226 of the Constitution of India, only on limited grounds. A Division Bench of this Court, in

Pankajaksy v. George Mathew (1987(2) KLT 723), has succinctly stated those grounds. The relevant portion of the said Judgment reads as follows :

> *"Thus, the rule made under a statute by an authority, delegated for the purpose can be challenged on the ground (1) that it is ultra vires of the Act; (2) it is opposed to the Fundamental rights; (3) it is opposed to other plenary laws. To ascertain whether a rule is ultra vires of the Act, the Court can go into the question (a) whether it contravenes expressly or impliedly any of the provisions of the statute; (b) whether it achieves the intent and object of the Act; and (c) whether it is 'unreasonable' to be manifestly arbitrary, unjust or partial implying thereby, want of authority to make such rules."*

Going by the above principles laid down by this Court, the claim of the petitioner has to be examined. According to them, all the Primary School Teachers should be treated as equals for the purpose of promotion to the post of Headmaster. The reservation made in favour of the B.Ed. Degree holders will tantamount to treating the equals unequally and therefore, the same offends their fundamental rights guaranteed under Articles 14 and 16 of the

Constitution. We feel that the prescription of a ratio for promotion, based on higher qualification cannot be condemned as treating equals unequally. There are several decisions of this Court and the Apex Court wherein the ratio prescribed between Diploma holders and degree holders in Engineering for the purpose of promotion has been upheld. But the learned counsel for the petitioners relied on the decisions of the Apex Court in ***PM Latha v. State of Kerala*** (2003(3) SCC 541) and ***Yogesh Kumar v. Government of NCT, Delhi*** (2003(3) SCC 548). In those decisions, the point that arose for decision was whether the B.Ed. degree holders are eligible for being considered for appointment to a post for which the qualification prescribed is only TTC. In the KS & SSR, Rule 10(a)(ii) prescribes that a person, who has a higher qualification, which pre-supposes the acquisition of of the lower prescribed qualification can also be treated as eligible for appointment. The claim based on the said Rule was considered in **PM Latha's** case mentioned above. The said decision can have no application to the facts of this case where one of the prescribed qualifications itself is B.Ed. In the second case cited by the learned counsel for the petitioner also, the prescribed qualification is only TTC. Therefore, the principles laid down in that decision can have no application to

the facts of this case.

4. Going by the principles laid by the Division Bench of this Court in ***Pankajaksy v. George Mathew,*** we feel that no ground has been made out warranting interference with the impugned rule. Accordingly, the Writ Petition fails. The learned counsel for the petitioners pointed out that so far the direction issued by the Tribunal to consider the representation filed by the petitioners has not been implemented. If that be so, the petitioners' remedy is to move a contempt application before the CAT.

In the result, the Writ Petition is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

03.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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